IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.801 OF 2006
IN
SECOND APPEAL ST.NO.9679 OF 2006

Appasaheb Kalgonda Patil ...Applicant

vs.

Dundyappa Rajendra Patil
(since deceased through L.R.) ...Respondent

Mr.D.B.Patil for the Applicant
Mr.M.R.Suryawanshi for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : DECEMBER 12,2007.

P.C.:

1. Heard Advocates appearing for the parties. The prayer in this Application is for condonation of delay of more than 74 months in preferring the Second Appeal. The learned Advocate for the Applicant has invited my attention to the averments made in the Application. He pointed out that as talks of settlement were in progress, the Appeal could not be preferred earlier. He submitted that only after the Applicant received a notice of execution proceeding, the present Appeal has been preferred. He submitted that there is sufficient explanation for condonation of delay and the delay may be condoned subject to payment of costs. The submission of the Advocate for the contesting Respondent is that there is absolutely no explanation for delay of 74 months.

2. It will be necessary to refer the averments made in the

Application. Paragraphs 2 and 3 of the Application read thus :

"2) Applicant/Appellant states and submits that since there were settlement talks through mediators, going on between the Plaintiff/ Respondent No.1 on one hand and heirs of deceased land owner through his L.R's and Applicant/Appellant, on the other hand after the First Appeal was dismissed for about 5 years. However, on one or other ground, the said settlement talks were not ultimately settled as expected.

3) The Applicant/Appellant, in good faith believed that the Respondent No.1/original Plaintiff was waiting for ultimate result of settlement as he was enjoying the suit land may not insist for actual execution of the sale Deed as directed by the Courts below."

3. In paragraph 4 of the Application, the Applicant has set out that in February 2006 he received a notice of execution application of the impugned decree which was made returnable on 1st March 2006. The Appeal along with the delay condonation application was preferred on 28th February 2006.

4. The averments made in paragraph 2 are devoid of any particulars. The impugned Judgment and Decree of the Appellate Court was passed on 26th November 1999. No

particulars of the alleged settlement talks have been incorporated in the Application. The names of the alleged Mediators are not mentioned in the Application. With such vague averments, it is impossible to accept that the talks of settlement were in progress till the year 2006 especially when the decree was passed on 26th November 1999.

5. Perusal of the Application shows that there is no explanation whatsoever for inordinate delay of more than 7 years in preferring the Second Appeal. Therefore, even on payment of costs, delay cannot be condoned. Application is rejected.

JUDGE